IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11970 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAUD ILYASBHAI DAL SANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11970 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 6.7.2001 passed by the Commissioner of Police, Rajkot City, Rajkot in exercise of power under

Section 3 of the PASA Act.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four offences registered against the detenu under the Bombay Prohibition Act and statements of two anonymous witnesses recorded by the sponsoring authority. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The petitioner seeks to challenge the said order of detention by this petition under Article 226 of the Constitution of India on various grounds stated in the petition.

4. Learned Advocate Mr. Verma appearing for the petitioner has restricted his argument to the fact that a representation sent by the detenu dated 12.11.2001 was received by the detaining authority on 15.11.2001. However, the same was forwarded to the Government on 21.11.2001. Thus, there is delay in forwarding the representation by the detaining authority which has affected the right of the detenu of making an effective representation and his continued detention would therefore be bad in law. Mr. Verma submitted that a communication dated 21st Nov. 2001 indicates that the representation was received on 19.11.2001. However, a communication from the Postal authority dated 18.1.2001 indicates that the representation was delivered on 15.11.2001. Mr Verma places on record a copy of the communication received from Postal Authority as well as copy of the representation indicating date of receipt of the representation. He has then drawn attention of this Court to a copy of the representation furnished to the detenu where date of 15.11.2001 is indicated as the date of receipt. He therefore urged that the representation was not forwarded to the Government for six days without any excuse. He therefore urged that the petition may be allowed.

5. Learned Assistant Government Pleader Mr.D.P.Joshi has opposed to this petition. However, in all fairness after consulting the file he does not dispute the factual

aspect of the date of receipt of the representation and forwarding of the same by the detaining authority.

6. Having regard to the contentions raised before this Court, it is amply clear that a representation addressed on behalf of detenu, was received by the detaining authority on 15.11.2001. On that date the detaining authority had become functus-officio and the authority was therefore required to immediately forward the same to the Government for effective consideration of the representation. Instead, detaining authority forwarded the same to the Government on 21.11.2001 i.e. on 6th day. No explanation is tendered for the lapse of time between 15.11.2001 to 21.11.2001 in merely forwarding the representation. This delay has affected the right of the detenu of making an effective representation, resulting in infringement of his right envisaged under Art. 22(5) of the Constitution. The continued detention of the detenu therefore would stand vitiated. The petition therefore deserves to be allowed on this ground alone.

7. The petition is therefore, allowed. Order of detention dated 6th July, 2001 passed by the Commissioner of Police, Rajkot City is quashed and set aside. Detenu Daud Ilyasbhai Dal Sandhi be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas